



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO COYNE & DELANY COMPANY EPA ID No.: VAD 046 992 343**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455(C) and (F), between the Virginia Waste Management Board, and Coyne & Delany Company for the purpose of resolving certain violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations. This Consent Order supersedes the Consent Order previously issued and effective on July 24, 2007 for Coyne & Delany Company.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "C&D" or "Company" means Coyne & Delany Company, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 1401.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means C&D's manufacturing operations located at 1565 Avon Street Extended, Charlottesville, Virginia.

6. "Generator" means a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(a)-(b) and (g)-(l)).
8. "Order" means this document, also known as a Consent Order.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions (See 40 CFR § 262.34(d)-(f)).
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means Virginia Administrative Code.
13. "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq. Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR (e.g., 40 CFR § 262.34 means that section as incorporated by 9 VAC 20-60-262). Citations to independent Virginia requirements are made directly to the VHWMR (e.g., 9 VAC 20-60-315 D).

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. C&D, a manufacturer of flush valves, conducts electroplating as part of its manufacturing processes at its Facility.
2. C&D had previously signed a consent order on June 15, 2007 for violations of the VHWMR. C&D is considered only to have those violations as referenced in this Order.
3. On July 24, 2008, staff from DEQ's waste compliance program conducted a hazardous waste compliance inspection of the Facility. During the inspection, DEQ staff made the following observations concerning the Facility:
  - a. C&D is a generator of hazardous waste as defined under 40 CFR 260.10. C&D operates under EPA Hazardous Waste ID No. VAD 046 992 343. Through its electroplating operations, the Facility generates listed hazardous waste, as defined under 40 CR 261.31, in the form of nickel and chromium waste sludge (Hazardous Waste ID No. F006). The Facility also generates universal waste

lamps as defined in 40 CFR 260.10;

- b. The Facility routinely generates approximately 17,000 lbs of F006 hazardous waste every 90 days (greater than 5,600 lbs per month); and,
- c. Pursuant to 40 CFR 260, as incorporated under 9 VAC 20-60-260 of the VHWMR, the Facility is a LGQ of hazardous waste in that it generates more than 1,000 kg (2,200 lbs) of hazardous waste per month; accordingly, the Facility is subject to regulation under the VHWMR as well as under certain provisions contained in 40 CFR Parts 262, 264 and 265, as incorporated under 9 VAC 20-60-12 et. seq. of the VHWMR.

Based on these observations, staff evaluated the Facility for compliance with the provisions of the VHWMR applicable to large quantity generators of hazardous waste.

- 4. During this same inspection of the Facility, staff documented violations of 40 CFR and the VHWMR as listed below. These violations were cited in DEQ's July 24, 2008 Inspection Report and in Notice of Violation No. WS-08-09-VRO-005 ("NOV"), both of which were issued to the Facility on October 6, 2008:
  - a. *Observation:* C&D does not have a written training program and does not instruct employees on relevant waste management procedures and emergency response procedures as required by 40 CFR 265.16 as referenced in 9 VAC 20-60-265,
  - b. *Observation:* C&D does not keep universal waste lamps in containers that remain closed and lack evidence of leakage, spillage or damage and could not demonstrate the length of time this waste had been accumulated as required by 40 CFR 273.13, 40 CFR 273.14, 40 CFR 273.15 as referenced in 9 VAC 20-60-273.
- 5. Based on the observations noted in paragraph 3 of this section, C&D violated the VHWMR at sections 9 VAC 20-60-265 and 9 VAC 20-60-273.
- 6. On November 19, 2008, representatives of C&D and DEQ met in an informal enforcement conference at DEQ-VRO which included a review of all violations cited in the NOV and in paragraph 3 of this section. During the conference, C&D informed the DEQ of its intentions to out-source the electroplating portion of its production process due to a 90% drop in business. Closure of the electroplating equipment would substantially reduce the amount of hazardous waste the Facility generates per month. Based on the hazardous waste production estimates calculated during the meeting, the Facility would cease to qualify as a LGQ once the electroplating process was outsourced. At the close of the conference, C&D agreed to submit a plan and schedule of actions to DEQ to address the violations and return the Facility to compliance with 40 CFR and the VHWMR.
- 7. On December 9, 2009, JRW & Associates, consultant to C&D, submitted C&D's plan

and schedule of corrective action. This plan and schedule has been incorporated into Appendix A of the Order.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders C&D, and C&D voluntarily agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of C&D, for good cause shown by C&D, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those apparent violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, C&D admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. C&D consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. C&D declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.
6. Failure by C&D to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. C&D shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. C&D shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C&D shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which C&D intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and C&D. Notwithstanding the foregoing, C&D agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. C&D petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order. The Director's determination that C&D has satisfied all the Requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board terminates this Order in his or its own discretion upon 30 days' written notice to C&D.

12. By appropriate signature below, C&D voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21<sup>st</sup> day of April, 2009.

Amy Thatcher Owens

Amy Thatcher Owens, Regional Director  
Valley Regional Office  
Department of Environmental Quality

C&D voluntarily agrees to the issuance of this Order.

By: Peter Delany

Date: 3-10-09

Commonwealth of Virginia

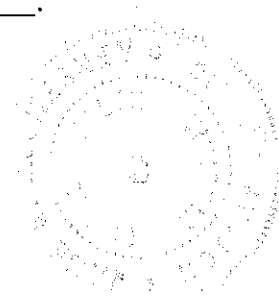
City/County of Charlottesville

The foregoing document was signed and acknowledged before me this 10 day of  
March, 2009, by Peter Delany, who is  
(name)

VP of C&D on behalf of the corporation.  
(title)

Jane S. McChesney #188136  
Notary Public

My commission expires: 31 July 2010.



**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**  
**COYNE & DELANY COMPANY**  
**EPA HAZARDOUS WASTE ID No. VAD 046 992 343**

1. By **February 27, 2009**, have developed a written training program that will instruct its employees on relevant waste management procedures and emergency response procedures and have completed such employee training as required by 40 CFR 265.16 as referenced in 9 VAC 20-60-265 and have implemented a plan to manage the length of time its universal waste lamps have been accumulated and store them in containers that remain closed and lack evidence of leakage, spillage or damage as required by 40 CFR 273.13, 40 CFR 273.14, 40 CFR 273.15 as referenced in 9 VAC 20-60-273.
2. By **June 30, 2009**, submit a copy of a signed contract with a out-side service provider for the chromium electroplating portion of its manufacturing process.
3. By **August 31, 2009**, have
  - Ceased operations of the chromium electroplating portion of its manufacturing process and,
  - Have properly cleaned this same process equipment. As part of the equipment closure process, C&D will have the accumulation tank visually inspected for any potential releases and have an environmental consultant investigate the potential for those releases. Additionally, when closing the accumulation tank system the owner will comply with all parts of 40 CFR 265.111 which states Sec. 265.111 Closure performance standard. The owner or operator must close the facility in a manner that:
    - (a) Minimizes the need for further maintenance, and
    - (b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and
    - (c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of Sec. Sec. 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 264.1102 and 265.114 which states, "Sec. 265.114 Disposal or decontamination of equipment, structures and soils". During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in Sec. Sec. 265.197, 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262 of this chapter.
  - Have submitted a letter confirming the equipment closure, a form 8700-12, and any other applicable supporting closure documentation to the DEQ.